

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 1165

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

RON GENTRY

AN ACT

RELATING TO HIGHWAYS; AUTHORIZING THE STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT TO REMOVE CERTAIN OBSTRUCTIONS FROM
STATE HIGHWAY ROADWAYS AND RIGHTS OF WAY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. REMOVAL OF OBSTRUCTIONS FROM ROADWAY OR RIGHT
OF WAY. --

A. The state highway and transportation department
may, without the consent of the owner or carrier of spilled
cargo or other personal property on the right of way or any
portion of roadway of the state highway system, remove the cargo
or property from the right of way or portion of roadway of the
state highway system in circumstances in which, as determined by
the department, the cargo or property is blocking the roadway or
may otherwise be endangering public safety.

Underscored material = new
[bracketed material] = delete

1 B. The state highway and transportation department
2 is hereby authorized to render minimum assistance at no charge
3 to motorists who are stranded on a right of way or roadway of
4 the state highway system. Such assistance may include pushing
5 vehicles off the roadway, providing minimal mechanical
6 assistance or emergency gasoline to stranded motorists and
7 providing assistance in tire changing when it is in the interest
8 of public safety to do so.

9 C. The state highway and transportation department
10 may, pursuant to Subsection A of this section, remove cargo or
11 personal property that the department has reason to believe is
12 hazardous material as defined by the federal Hazardous Materials
13 Transportation Authorization Act of 1994, or a hazardous
14 substance as defined by the Emergency Management Act; provided
15 that in doing so, the department must comply with applicable
16 provisions of the Emergency Management Act.

17 D. The state highway and transportation department
18 and its officers and employees are not liable for any damages or
19 claims of damages to removed cargo or personal property that
20 resulted from removal or disposal by the department unless the
21 removal or disposal was carried out recklessly or involves
22 wanton or intentional misconduct.

23 E. The state highway and transportation department
24 and its officers and employees are not liable for any damages or
25 claims that may result from the failure to exercise any

Underscored material = new
[bracketed material] = delete

1 authority granted under this section.

2 F. The owner or carrier of cargo or personal
3 property removed under the authority of Subsection A or C of
4 this section shall reimburse the state highway and
5 transportation department for the costs of the removal and
6 disposition.

7 - 3 -

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**State of New Mexico
House of Representatives**

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

February 27, 1997

Mr. Speaker:

**Your TRANSPORTATION COMMITTEE, to whom has been
referred**

HOUSE BILL 1165

**has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.**

Respectfully submitted,

Daniel P. Silva, Chairman

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 11 For 0 Against

Yes: 11

Excused: None

Absent: W. C. Williams

M \H1165

Underscored material = new
~~[bracketed material] = delete~~

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 15, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 1165

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 1, line 13, after "WAY" insert "; AMENDING THE
TORT CLAIMS ACT".

2. On page 2, line 2, strike "is hereby authorized to" and
insert in lieu thereof "may".

3. On page 2, lines 17 through 25 and on page 3, line 1,
strike Subsections D and E in their entirety.

4. Reletter the succeeding subsection accordingly.

5. On page 3, between lines 6 and 7, insert the following
new section:

. 116496. 1

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 1165

Page 7

1
2 "Section 2. Section 41-4-11 NMSA 1978 (being Laws 1976,
3 Chapter 58, Section 11, as amended) is amended to read:

4 "41-4-11. LIABILITY--HIGHWAYS AND STREETS. --

5
6 A. The immunity granted pursuant to Subsection A of
7 Section 41-4-4 NMSA 1978 does not apply to liability for damages
8 resulting from bodily injury, wrongful death or property damage
9 caused by the negligence of public employees while acting within
10 the scope of their duties during the construction, and in
11 subsequent maintenance, of any bridge, culvert, highway, roadway,
12 street, alley, sidewalk or parking area.

13 B. The liability for which immunity has been waived
14 pursuant to Subsection A of this section shall not include
15 liability for damages caused by:

16
17 (1) a defect in plan or design of any bridge,
18 culvert, highway, roadway, street, alley, sidewalk or parking
19 area;

20 (2) the failure to construct or reconstruct any
21 bridge, culvert, highway, roadway, street, alley, sidewalk or
22 parking area; [or]

23
24 (3) a deviation from standard geometric design
25 practices for any bridge, culvert, highway, roadway, street,
alley, sidewalk or parking area allowed on a case-by-case basis

. 116496. 1

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 1165

Page 8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

for appropriate cultural, ecological, economic, environmental,
right of way through Indian lands, historical or technical
reasons, provided the deviation:

(a) is required by extraordinary
circumstances;

(b) has been approved by the governing
authority; and

(c) is reasonable and necessary as
determined by the application of sound engineering principles
taking into consideration the appropriate cultural, ecological,
economic, environmental, right of way through Indian lands,
historical or technical circumstances; or

(4) the failure to remove any spilled cargo or
other personal property from the right of way or any portion of
roadway of the state highway system or the failure to render
assistance to motorists who are stranded on a right of way or
roadway of the state highway system."

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 1165

Page 9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Alwin, M P. Garcia, King, Rios, Sanchez, Vaughn

Absent: None

117956.1

M \H1165

. 116496.1

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1 HJC/HB 1165

Page 10

2

3

4

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

5

6

7

8

March 18, 1997

9

10 Mr. President:

11

12 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
13 whom has been referred

14

HOUSE BILL 1165, as amended

15

16

17 has had it under consideration and reports same with
18 recommendation that it DO PASS.

18

19

Respectfully submitted,

20

21

22

23

Roman M. Maes, III, Chairman

24

25

Adopted _____ Not Adopted _____

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1 HJC/HB 1165

Page 11

2

3

(Chief Clerk)

(Chief Clerk)

4

5

6

Date _____

7

8

9

The roll call vote was 6 For 1 Against

10

Yes: 6

11

No: Maes

12

Excused: Fidel, Howes, Robinson

13

Absent: None

14

15

H1165CT1

16

17

18

19

20

21

22

23

24

25

Underscored material = new
[bracketed material] = delete